

WRONGFUL LIEN AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

Committee Note:

The Political Subdivisions Interim Committee recommended this bill.

General Description:

This bill recodifies and amends Title 38, Chapter 9, Wrongful Liens and Wrongful Judgment Liens.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a document sponsor who submits a nonconsensual common law document to the county recorder for recording to:
 - cause the sheriff to serve notice of the recording on each affected person; and
 - initiate a judicial proceeding to determine whether the nonconsensual common law document is enforceable;
- ▶ provides that a document sponsor who submits an unenforceable nonconsensual common law document to the county recorder for recording is liable to each affected person for any actual damages;
- ▶ provides that a recorded nonconsensual common law document is void if the document sponsor does not comply with the requirements described in this bill; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **38-9a-102**, as enacted by Laws of Utah 2005, Chapter 93

34 **76-6-503.5**, as enacted by Laws of Utah 2005, Chapter 93

35 **78B-5-201**, as last amended by Laws of Utah 2011, Chapter 88

36 **78B-5-408**, as last amended by Laws of Utah 2011, Chapter 88

37 ENACTS:

38 **38-9-101**, Utah Code Annotated 1953

39 **38-9-201**, Utah Code Annotated 1953

40 **38-9-301**, Utah Code Annotated 1953

41 **38-9-302**, Utah Code Annotated 1953

42 **38-9-303**, Utah Code Annotated 1953

43 **38-9-304**, Utah Code Annotated 1953

44 **38-9-305**, Utah Code Annotated 1953

45 RENUMBERS AND AMENDS:

46 **38-9-102**, (Renumbered from 38-9-1, as last amended by Laws of Utah 2010, Chapter
47 381)

48 **38-9-103**, (Renumbered from 38-9-2, as last amended by Laws of Utah 2012, Chapter
49 278)

50 **38-9-202**, (Renumbered from 38-9-3, as last amended by Laws of Utah 2010, Chapter
51 381)

52 **38-9-203**, (Renumbered from 38-9-4, as last amended by Laws of Utah 2010, Chapter
53 381)

54 **38-9-204**, (Renumbered from 38-9-6, as enacted by Laws of Utah 1997, Chapter 125)

55 **38-9-205**, (Renumbered from 38-9-7, as enacted by Laws of Utah 1997, Chapter 125)



57 *Be it enacted by the Legislature of the state of Utah:*

58 Section 1. Section **38-9-101** is enacted to read:

CHAPTER 9. WRONGFUL LIEN ACT

Part 1. General Provisions

38-9-101. Title.

(1) This chapter is known as the "Wrongful Lien Act."

(2) This part is known as "General Provisions."

Section 2. Section **38-9-102**, which is renumbered from Section 38-9-1 is renumbered and amended to read:

~~[38-9-1].~~ **38-9-102. Definitions.**

As used in this chapter:

(1) "Affected person" means:

(a) a person who is a record interest holder of the real property that is the subject of a recorded nonconsensual common law document; or

(b) the person against whom a recorded nonconsensual common law document purports to reflect or establish a claim or obligation.

(2) "Document sponsor" means a person who, personally or through a designee, signs or submits for recording a document that is, or is alleged to be, a nonconsensual common law document.

~~[(1)]~~ (3) "Interest holder" means a person who holds or possesses a present, lawful property interest in certain real property, including an owner, title holder, mortgagee, trustee, or beneficial owner.

~~[(2)]~~ (4) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any county recorder in the state asserting a lien, or notice of interest, or other claim of interest in certain real property.

(5) "Nonconsensual common law document" means a document that is submitted to a county recorder's office for recording against public official property that:

(a) purports to create a lien or encumbrance on or a notice of interest in the real property;

(b) at the time the document is recorded, is not:

(i) expressly authorized by this chapter or a state or federal statute;

(ii) authorized by or contained in an order or judgment of a court of competent jurisdiction; or

90 (iii) signed by or expressly authorized by a document signed by the owner of the real
 91 property; and

92 (c) is submitted in relation to ~~H→~~ ~~[an action taken by a public official in]~~ ~~←H~~ the
 92a public official's
 93 ~~H→~~ status or ~~←H~~ capacity as a public official.

94 ~~[(3)]~~ (6) "Owner" means a person who has a vested ownership interest in [certain] real
 95 property.

96 (7) "Political subdivision" means a county, city, town, school district, special
 97 improvement or taxing district, local district, special service district, or other governmental
 98 subdivision or public corporation.

99 (8) "Public official" means:

99a ~~H→~~ (a) a current or former:

100 ~~[(a)-a]~~ (i) ←H member of the Legislature;

101 ~~H→~~ ~~[(b)-a]~~ (ii) ←H member of Congress;

102 ~~H→~~ ~~[(c)-a]~~ (iii) ←H judge;

103 ~~H→~~ ~~[(d)-a]~~ (iv) ←H member of law enforcement;

104 ~~H→~~ ~~[(e)-a]~~ (v) ←H corrections officer; ~~H→~~ ~~[or]~~

105 ~~[(f)-an]~~ (vi) ←H active member of the Utah State Bar; ~~H→~~ or

105a (vii) member of the Board of Pardons and Parole;

106 ~~[(g)]~~ (b) ←H an individual ~~H→~~ currently or previously ~~←H~~ appointed or elected to
 106a an elected position in:

107 (i) the executive branch of state or federal government; or

108 (ii) a political subdivision;

109 ~~H→~~ ~~[(h)]~~ (c) ←H an individual ~~H→~~ currently or previously ~~←H~~ appointed to or employed
 109a in a position in a political subdivision, or

110 state or federal government ~~H→~~ [if] ~~←H~~ that ~~H→~~ [individual] ~~←H~~ :

111 (i) H→ [occupies] is ←H a policymaking position H→ ; ←H or H→ [makes]

111a (ii) involves:

111b (A) ←H purchasing or contracting decisions;

112 ~~H→~~ ~~[(ii)-drafts]~~ (B) drafting ←H legislation or H→ [makes] making ←H rules;

113 ~~H→~~ ~~[(iii)-determines]~~ (C) determining ←H rates or fees; or

114 ~~H→~~ ~~[(iv)-makes]~~ (D) making ←H adjudicative decisions; or

115 ~~H→~~ ~~[(i)]~~ (d) ←H an immediate family member of a person described in Subsections (8)(a)
 115a through

116 ~~H→~~ ~~[(h)]~~ (c) ←H .

117 (9) "Public official property" means real property that has at least one record interest
118 holder who is a public official.

119 ~~(4)~~ (10) (a) "Record interest holder" means a person who holds or possesses a
120 present, lawful property interest in ~~certain~~ real property, including an owner, titleholder,

121 mortgagee, trustee, or beneficial owner, and whose name and interest in that real property
122 appears in the county recorder's records for the county in which the property is located.

123 (b) "Record interest holder" includes any grantor in the chain of the title in ~~[certain]~~
124 real property.

125 ~~[(5)]~~ (11) "Record owner" means an owner whose name and ownership interest in
126 certain real property is recorded or filed in the county recorder's records for the county in which
127 the property is located.

128 ~~[(6)]~~ (12) "Wrongful lien" means any document that purports to create a lien, notice of
129 interest, or encumbrance on an owner's interest in certain real property and at the time it is
130 recorded is not:

131 (a) expressly authorized by this chapter or another state or federal statute;

132 (b) authorized by or contained in an order or judgment of a court of competent
133 jurisdiction in the state; or

134 (c) signed by or authorized pursuant to a document signed by the owner of the real
135 property.

136 Section 3. Section **38-9-103**, which is renumbered from Section 38-9-2 is renumbered
137 and amended to read:

138 ~~[38-9-2].~~ **38-9-103. Scope.**

139 ~~[(1)(a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any~~
140 ~~recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or~~
141 ~~after May 5, 1997.]~~

142 ~~[(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless~~
143 ~~of the date the lien was recorded or filed.]~~

144 ~~[(c) (1) [Notwithstanding Subsections (1)(a) and (b), the provisions of this] This~~
145 ~~chapter [applicable to the filing of a notice of interest do] does not apply to a notice of interest~~
146 ~~filed before May 5, 2008.~~

147 (2) ~~[The provisions of this chapter shall] This chapter does not [prevent a person from~~
148 ~~filing] apply to a lis pendens recorded in accordance with Section 78B-6-1303 [or] and does~~
149 ~~not prevent a person from seeking any other relief permitted by law.~~

150 (3) This chapter does not apply to a person entitled to a preconstruction or construction
151 lien under Section 38-1a-301 who files a lien pursuant to Title 38, Chapter 1a, Preconstruction

152 and Construction Liens.

153 Section 4. Section **38-9-201** is enacted to read:

154 **Part 2. Recording a Wrongful Lien**

155 **38-9-201. Title.**

156 This part is known as "Recording a Wrongful Lien."

157 Section 5. Section **38-9-202**, which is renumbered from Section 38-9-3 is renumbered
158 and amended to read:

159 ~~[38-9-3].~~ **38-9-202. County recorder may reject wrongful lien within scope of**
160 **employment -- Good faith requirement.**

161 (1) (a) A county recorder may ~~[reject recording of]~~ refuse to record a lien if the county
162 recorder determines that the lien is a wrongful lien ~~[as defined in Section 38-9-1].~~

163 (b) If the county recorder ~~[rejects a document]~~ refuses to record a lien in accordance
164 with Subsection (1)(a), the county recorder shall immediately return the original document
165 together with a notice that the document was rejected pursuant to this section to the person
166 attempting to record the document or to the address provided on the document.

167 (2) A county recorder who, within the scope of the county recorder's employment,
168 rejects or accepts a document for recording in good faith under this section is not liable for
169 damages.

170 (3) If a ~~[rejected]~~ document that a county recorder refuses to record under this section
171 is later found not to be ~~[recordable]~~ a wrongful lien pursuant to a court order, it shall have no
172 retroactive recording priority.

173 (4) Nothing in this chapter ~~[shall preclude any]~~ precludes a person from pursuing any
174 remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

175 Section 6. Section **38-9-203**, which is renumbered from Section 38-9-4 is renumbered
176 and amended to read:

177 ~~[38-9-4].~~ **38-9-203. Civil liability for recording wrongful lien -- Damages.**

178 (1) A lien claimant who records or causes a wrongful lien ~~[as defined in Section~~
179 ~~38-9-1]~~ to be recorded in the office of the county recorder against real property is liable to a
180 record interest holder for any actual damages proximately caused by the wrongful lien.

181 (2) If the person in violation of Subsection (1) refuses to release or correct the wrongful
182 lien within 10 days from the date of written request from a record interest holder of the real

183 property delivered personally or mailed to the last-known address of the lien claimant, the
 184 person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever
 185 is greater, and for reasonable attorney fees and costs.

186 (3) A person is liable to the record owner of real property for \$10,000 or for treble
 187 actual damages, whichever is greater, and for reasonable attorney fees and costs, who records
 188 or causes to be recorded a wrongful lien [~~as defined in Section 38-9-1~~] in the office of the
 189 county recorder against the real property, knowing or having reason to know that the document:

- 190 (a) is a wrongful lien;
 191 (b) is groundless; or
 192 (c) contains a material misstatement or false claim.

193 Section 7. Section **38-9-204**, which is renumbered from Section 38-9-6 is renumbered
 194 and amended to read:

195 **[38-9-6]. 38-9-204. Petition to file lien -- Notice to record interest holders --**
 196 **Summary relief -- Contested petition.**

197 (1) A lien claimant whose document is rejected pursuant to Section [~~38-9-3~~] 38-9-202
 198 may petition the district court [~~in the county in which the document was rejected~~] for an
 199 expedited determination that the lien may be recorded [~~or filed~~].

200 (2) [~~(a) The~~] A petition [shall be filed with the district court within 10 days of the date
 201 notice is received of the rejection and shall state with specificity the grounds why the document
 202 should lawfully be recorded or filed.] under Subsection (1) shall:

203 (a) be filed:

204 (i) with the district court in the county of the county recorder who refused to record the
 205 document; and

206 (ii) within 10 days after the day on which the person who files the petition receives the
 207 notice under Subsection 38-9-202(1)(b) of the county recorder's refusal to record the document;

208 (b) state with specificity the grounds why the document should lawfully be recorded;

209 and

210 [~~(b) The petition shall~~] (c) be supported by a sworn affidavit of the lien claimant.

211 [~~(c)~~] (3) If the court finds the petition is insufficient, it may dismiss the petition without
 212 a hearing.

213 [~~(d)~~] (4) (a) If the court grants a hearing, the petitioner shall, by certified or registered

214 mail, serve a copy of the petition, notice of hearing, and a copy of the court's order granting an
215 expedited hearing on all record interest holders of the property sufficiently in advance of the
216 hearing to enable any record interest holder to attend the hearing [~~and service shall be~~
217 ~~accomplished by certified or registered mail~~].

218 ~~[(e)]~~ (b) Any record interest holder of the property has the right to attend and contest
219 the petition.

220 ~~[(3)]~~ (5) (a) [~~Following a hearing on the matter, if~~] If, following a hearing, the court
221 finds that the document may lawfully be recorded, [~~it~~] the court shall issue an order directing
222 the county recorder to accept the document for recording. [~~If the petition is contested, the court~~
223 ~~may award costs and reasonable attorney's fees to the prevailing party.~~]

224 (b) If the petition is contested, the court may award costs and reasonable attorney fees
225 to the prevailing party.

226 ~~[(4)]~~ (6) (a) A summary proceeding under this section [~~is only to determine whether or~~
227 ~~not a contested document, on its face, shall be recorded by the county recorder. The~~
228 ~~proceeding may not determine the truth of the content of the document nor the property or legal~~
229 ~~rights of the parties beyond the necessary determination of whether or not the document shall~~
230 ~~be recorded. The court's grant or denial of the petition under this section may not restrict any~~
231 ~~other legal remedies of any party, including any right to injunctive relief pursuant to Rules of~~
232 ~~Civil Procedure, Rule 65A, Injunctions.]:~~

233 (i) may only determine whether a contested document, on its face, shall be recorded by
234 the county recorder; and

235 (ii) may not determine the truth of the content of the document or the property or legal
236 rights of the parties beyond the necessary determination of whether the document shall be
237 recorded.

238 (b) A court's grant or denial of a petition under this section may not restrict any other
239 legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil
240 Procedure, Rule 65A, Injunctions.

241 ~~[(5)]~~ (7) If [~~the~~] a petition under this section contains a claim for damages, the
242 [~~damage~~] proceedings related to the claim for damages may not be expedited under this
243 section.

244 Section 8. Section **38-9-205**, which is renumbered from Section 38-9-7 is renumbered

245 and amended to read:

246 ~~[38-9-7].~~ 38-9-205. Petition to nullify lien -- Notice to lien claimant --

247 Summary relief -- Finding of wrongful lien -- Wrongful lien is void.

248 (1) ~~[Any]~~ A record interest holder of real property against which a wrongful lien ~~[as~~
249 ~~defined in Section 38-9-1 has been]~~ is recorded may petition the district court in the county in
250 which the document ~~[was]~~ is recorded for summary relief to nullify the wrongful lien.

251 (2) The petition described in Subsection (1) shall state with specificity the claim that
252 the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest
253 holder.

254 (3) (a) If the court finds the petition insufficient, ~~[it]~~ the court may dismiss the petition
255 without a hearing.

256 (b) If the court finds the petition is sufficient, the court shall schedule a hearing within
257 10 days to determine whether the document is a wrongful lien.

258 (c) The record interest holder shall serve a copy of the petition on the lien claimant and
259 a copy of a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.

260 (d) The lien claimant is entitled to attend and contest the petition.

261 (4) A summary proceeding under this section ~~[is only to determine whether or not a~~
262 ~~document is a wrongful lien. The proceeding shall not determine any other property or legal~~
263 ~~rights of the parties nor restrict other legal remedies of any party.];~~

264 (a) may only determine whether a document is a wrongful lien; and

265 (b) may not determine any other property or legal rights of the parties or restrict other
266 legal remedies of any party.

267 (5) (a) ~~[Following a hearing on the matter, if]~~ If, following a hearing, the court
268 determines that the recorded document is a wrongful lien, the court shall issue an order
269 declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding
270 costs and reasonable ~~[attorney's]~~ attorney fees to the petitioner.

271 (b) (i) The record interest holder may ~~[record]~~ submit a certified copy of the order
272 ~~[with]~~ to the county recorder for recording.

273 (ii) The order shall contain a legal description of the real property.

274 (c) If the court determines that the claim of lien is valid, the court shall dismiss the
275 petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal

276 order shall contain a legal description of the real property. The prevailing lien claimant may
277 record a certified copy of the dismissal order.

278 (6) If the [~~district~~] court determines that the [~~lien~~] recorded document is a wrongful
279 lien [~~as defined in Section 38-9-1~~], the wrongful lien is void ab initio and provides no notice of
280 claim or interest.

281 (7) If [~~the~~] a petition under this section contains a claim for damages, the [~~damage~~]
282 proceedings related to the claim for damages may not be expedited under this section.

283 Section 9. Section **38-9-301** is enacted to read:

284 **Part 3. Recording a Nonconsensual Common Law Document**

285 **38-9-301. Title.**

286 This part is known as "Recording a Nonconsensual Common Law Document."

287 Section 10. Section **38-9-302** is enacted to read:

288 **38-9-302. Recording a nonconsensual common law document -- Procedure.**

289 (1) For a nonconsensual common law document recorded on or after May 13, 2014,
290 within five business days after the day on which an individual submits a nonconsensual
291 common law document to a county recorder for recording, the individual shall cause the sheriff
292 to serve written notice of the recording of the nonconsensual common law document upon each
293 affected person.

294 (2) A written notice described in Subsection (1) shall include:

295 (a) the name, address, and telephone number of the document sponsor;

296 (b) the date the nonconsensual common law document was recorded; and

297 (c) a copy of the nonconsensual common law document.

298 (3) (a) No later than three business days after the day on which the sheriff serves the
299 written notice described in Subsection (1), the sheriff shall submit proof of service to the
300 county recorder for recording.

301 (b) The county recorder may not charge a fee for recording a proof of service under
302 Subsection (2)(a).

303 Section 11. Section **38-9-303** is enacted to read:

304 **38-9-303. Enforcement proceeding required.**

305 (1) For a nonconsensual common law document recorded on or after May 13, 2014,
306 within 10 business days after the day on which a document sponsor submits a nonconsensual

307 common law document to the county recorder for recording, the document sponsor shall file a
308 complaint in district court in the county of the county recorder where the nonconsensual
309 common law document was recorded for a proceeding to obtain an order that the
310 nonconsensual common law document is valid and enforceable.

311 (2) A complaint to initiate a judicial proceeding described in Subsection (1) shall:

312 (a) state with specificity the grounds that make the nonconsensual common law
313 document valid and enforceable;

314 (b) be supported by the document sponsor's sworn affidavit; and

315 (c) name each affected person as an opposing party.

316 (3) If the court finds that a complaint filed under Subsection (1) does not meet the
317 requirements described in Subsection (2), the court may dismiss the complaint without a
318 hearing.

319 (4) If a complaint filed under Subsection (1) meets the requirements described in
320 Subsection (2), the court:

321 (a) shall hold a hearing;

322 (b) following the hearing, shall issue an order that:

323 (i) states whether the nonconsensual common law document is valid and enforceable;

324 and

325 (ii) includes a legal description of the real property that is the subject of the complaint;

326 and

327 (c) may award costs and reasonable attorney fees to the prevailing party.

328 (5) Within three business days after the day on which the court issues a final order in a
329 proceeding under this section, the prevailing party shall submit a copy of the court's final order
330 to the county recorder for recording.

331 (6) A nonconsensual common law document is presumed invalid and unenforceable.

332 (7) A person's lack of belief in the jurisdiction or authority of the state or of the
333 government of the United States is not a defense to liability under this section.

334 (8) A court's order in a proceeding under this section does not restrict any other legal
335 remedies available to any party, including any right to injunctive relief under Rules of Civil
336 Procedure, Rule 65A, Injunctions.

337 Section 12. Section **38-9-304** is enacted to read:

338 **38-9-304. Civil liability -- Damages.**

339 (1) If, under Section 38-9-303, a court finds that a recorded nonconsensual common
 340 law document is unenforceable, the document sponsor of the nonconsensual common law
 341 document is liable to each affected person for any actual damages proximately caused by
 342 recording the nonconsensual common law document, costs, and reasonable attorney fees.

343 (2) A person who is liable under Subsection (1) for a nonconsensual common law
 344 document is jointly and severally liable with each other person who is liable for the
 345 nonconsensual common law document.

346 Section 13. Section **38-9-305** is enacted to read:

347 **38-9-305. Failure to comply -- Nonconsensual common law document void.**

348 A recorded nonconsensual common law document that is recorded on or after May 13,
 349 2014, is void and has no legal effect if the document sponsor does not:

350 (1) comply with the notice requirements described in Section 38-9-302;

351 (2) comply with the judicial enforcement requirements described in Section 38-9-303;

352 and

353 (3) prevail in a judicial enforcement proceeding under Section 38-9-303.

354 Section 14. Section **38-9a-102** is amended to read:

355 **38-9a-102. Definitions.**

356 As used in this chapter, "wrongful lien" refers to a lien made in violation of Section
 357 76-6-503.5, and includes [an instrument or document as defined in Section 38-9-1.];

358 (1) a wrongful lien as defined in Section 38-9-102; and

359 (2) a nonconsensual common law document as defined in Section 38-9-102.

360 Section 15. Section **76-6-503.5** is amended to read:

361 **76-6-503.5. Wrongful liens and fraudulent handling of recordable writings --**
 362 **Penalties.**

363 (1) "Lien" means:

364 (a) an instrument or document filed pursuant to Section 70A-9a-516;

365 (b) a nonconsensual common law document as defined in Section 38-9-102;

366 ~~[(b)] (c) [an instrument or document described in Subsection 38-9-1(6); and] a~~
 367 wrongful lien as defined in Section 38-9-102; or

368 ~~[(c)] (d)~~ any instrument or document that creates or purports to create a lien or

369 encumbrance on an owner's interest in real or personal property or a claim on another's assets.

370 (2) A person is guilty of the crime of wrongful lien if that person knowingly makes,
371 utters, records, or files a lien:

372 (a) having no objectively reasonable basis to believe he has a present and lawful
373 property interest in the property or a claim on the assets; or

374 (b) if the person files the lien in violation of a civil wrongful lien injunction pursuant to
375 Title 38, Chapter 9a, Wrongful Lien Injunctions.

376 (3) A violation of this section is a third degree felony unless the person has been
377 previously convicted of an offense under this section, in which case the violation is a second
378 degree felony.

379 (4) (a) Any person who with intent to deceive or injure anyone falsifies, destroys,
380 removes, records, or conceals any will, deed, mortgage, security instrument, lien, or other
381 writing for which the law provides public recording is guilty of fraudulent handling of
382 recordable writings.

383 (b) A violation of Subsection (4)(a) is a third degree felony unless the person has been
384 previously convicted of an offense under this section, in which case the violation is a second
385 degree felony.

386 (5) This section does not prohibit prosecution for any act in violation of Section
387 76-8-414 or for any offense greater than an offense under this section.

388 Section 16. Section **78B-5-201** is amended to read:

389 **78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.**

390 (1) For purposes of this part, "Registry of Judgments" means the index where a
391 judgment is filed and searchable by the name of the judgment debtor through electronic means
392 or by tangible document.

393 (2) On or after July 1, 1997, a judgment entered in a district court does not create a lien
394 upon or affect the title to real property unless the judgment is filed in the Registry of Judgments
395 of the office of the clerk of the district court of the county in which the property is located.

396 (3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment
397 entered in a district court does not create a lien upon or affect the title to real property unless
398 the judgment or an abstract of judgment is recorded in the office of the county recorder in
399 which the real property of the judgment debtor is located.

400 (b) State agencies are exempt from the recording requirement of Subsection (3)(a).

401 (4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is
402 filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract
403 of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

404 (a) the information identifying the judgment debtor on the judgment or abstract of
405 judgment; or

406 (b) a copy of the separate information statement of the judgment creditor that contains:

407 (i) the correct name and last-known address of each judgment debtor and the address at
408 which each judgment debtor received service of process;

409 (ii) the name and address of the judgment creditor;

410 (iii) the amount of the judgment as filed in the Registry of Judgments;

411 (iv) if known, the judgment debtor's Social Security number, date of birth, and driver's
412 license number if a natural person; and

413 (v) whether or not a stay of enforcement has been ordered by the court and the date the
414 stay expires.

415 (5) For the information required in Subsection (4), the judgment creditor shall:

416 (a) provide the information on the separate information statement if known or available
417 to the judgment creditor from its records, its attorney's records, or the court records in the
418 action in which the judgement was entered; or

419 (b) state on the separate information statement that the information is unknown or
420 unavailable.

421 (6) (a) Any judgment that requires payment of money and is entered in a district court
422 on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office
423 of a county recorder after July 1, 2002, that does not include the debtor identifying information
424 as required in Subsection (4) is not a lien until a separate information statement of the
425 judgment creditor is recorded in the office of a county recorder in compliance with Subsections
426 (4) and (5).

427 (b) The separate information statement of the judgment creditor referred to in
428 Subsection (6)(a) shall include:

429 (i) the name of any judgment creditor, debtor, assignor, or assignee;

430 (ii) the date on which the judgment was recorded in the office of the county recorder as

431 described in Subsection (4); and

432 (iii) the county recorder's entry number and book and page of the recorded judgment.

433 (7) A judgment that requires payment of money recorded on or after September 1,
434 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with
435 actual or constructive knowledge of the judgment.

436 (8) A judgment or notice of judgment wrongfully filed against real property is subject
437 to Title 38, Chapter 9, Wrongful [~~Liens and Wrongful Judgment Liens~~] Lien Act.

438 (9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the
439 office of a county recorder, a person shall, in the office of the county recorder of each county in
440 which an instrument creating the lien is recorded, record a document releasing, assigning,
441 renewing, or extending the lien.

442 (b) The document described in Subsection (9)(a) shall include:

443 (i) the date of the release, assignment, renewal, or extension;

444 (ii) the name of any judgment creditor, debtor, assignor, or assignee; and

445 (iii) for the county in which the document is recorded in accordance with Subsection
446 (9)(a):

447 (A) the date on which the instrument creating the lien was recorded in that county's
448 office of the county recorder; and

449 (B) in accordance with Section 57-3-106, that county recorder's entry number and book
450 and page of the recorded instrument creating the judgment lien.

451 Section 17. Section 78B-5-408 is amended to read:

452 **78B-5-408. Judgments and awards on foreign-money claims -- Time of money**
453 **conversion -- Form of judgment.**

454 (1) Except as provided in Subsection (3), a judgment or arbitration award on a
455 foreign-money claim must be stated in an amount of the money of the claim.

456 (2) The judgment or award is payable in that foreign money or at the option of the
457 debtor in the amount of United States dollars which will purchase that foreign money on the
458 conversion date at a bank-offered spot rate.

459 (3) Assessed costs must be entered in United States dollars.

460 (4) Each payment in United States dollars must be accepted and credited on the
461 judgment or award in the amount of the foreign money that could be purchased by the dollars at

462 a bank-offered spot rate of exchange at or near the close of business on the conversion date for
463 that payment.

464 (5) Judgments or awards made in an action on both:

465 (a) a defense, set-off, recoupment, or counterclaim; and

466 (b) the adverse party's claim, must be netted by converting the money of the smaller
467 into the money of the larger, and by subtracting the smaller from the larger, and must specify
468 the rates of exchange used.

469 (6) A judgment substantially in the following form complies with Subsection (1):

470 IT IS ADJUDGED AND ORDERED that Defendant (insert name) pay to Plaintiff
471 (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the
472 rate of (insert rate - see Section 78B-5-410) percent a year or, at the option of the judgment
473 debtor, the number of United States dollars as will purchase the (insert name of foreign money)
474 with interest due, at a bank-offered spot rate at or near the close of business on the banking day
475 next before the day of payment, together with assessed costs of (insert amount) United States
476 dollars.

477 (7) If a contract claim is of the type covered by Subsection 78B-5-406(1) or (2), the
478 judgment or award shall be entered for the amount of the money stated to measure the
479 obligation to be paid in the money specified for payment or, at the option of the debtor, the
480 number of United States dollars as will purchase the computed amount of the money of
481 payment on the conversion date at a bank-offered spot rate.

482 (8) A judgment shall be filed in the judgment docket and indexed in foreign money in
483 the same manner, and shall have the same effect as a lien as other judgments. It may be
484 discharged by payment.

485 (9) A person shall record a judgment lien, or assignment, release, renewal, or extension
486 of a judgment lien, in the county recorder's office in accordance with [~~Sections 17-21-10;~~
487 ~~38-9-1, 78B-5-201, and 78B-5-202.~~] the following provisions, as applicable:

488 (a) Sections 17-21-10, 78B-5-201, and 78B-5-202; and

489 (b) Title 38, Chapter 9, Wrongful Lien Act.

Legislative Review Note
as of 11-8-13 2:44 PM

Office of Legislative Research and General Counsel